IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 3769 of 2005

Between:

Sri Nirmal Yadav, S/o. Late M. Tuljaram Yadav,
R/o. 15-5-249/1, Osman Shahi, Gowliguda, Hyderabad.

... PETITIONER

AND

1 The Collector, Hyderabad District, At Nampally.
2 The Revenue divisional Officer, Hyderabad District at Collector, Office, Nampally, Hyderabad.
3 The Mandal Revenue Officer, Hyderabad District at Collector, Office, Nampally, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an order or orders one in the nature of Writ of Mandamus by declaring the proceedings notice under Section 6 of A.P.L.E Act 1905 in file No.B/704/2005 issued by the respondent No.3 dt. 25-2-2005 for demolishing the existing structure in the property bearing No. 15-5-583/1 admeasuring 25 square yards situated at Afzalgunj, Hyderabad and declare the same as totally illegal, arbitrary against the principle of natural justice, ultra vires and liable to be set aside and pass such other order or orders

Counsel for the Petitioner: MR.SURESH SHIV SAGAR

Counsel for the Respondents: GP FOR REVENUE

The Court at the stage of admission made the following:

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ORDER:

The petitioner claims to be the owner and possessor of the property bearing No.15-5-583/1 admeasuring 25 square yards situated at Afzalgunj, Hyderabad. Aggrieved by the alleged action of the respondents in interfering with his possession and taking steps to demolish the existing structures, the petitioner earlier filed W.P.No.2396 of 2005, which was disposed of by this Court on
16-02-2005 with a direction to the respondents not to interfere with his possession in respect of the said premises without following due process of law. Thereafter, the third respondent-Mandal Revenue Officer issued a notice under Section 7 of the A.P. Land Encroachment Act, 1905 calling upon him to explain as to why he should not be evicted from the said premises on the ground that the said land is a Government land and that he has been in unauthorized occupation of the same.

The petitioner states that on 21-02-2005 he addressed a letter to the third respondent requesting to extend the time by 15 days for submitting his explanation and to produce the documents to prove his title in respect of the property in question. The petitioner states that thereafter on 25-02-2005 he submitted detailed explanation marking copies to the Collector, Hyderabad as well as the Revenue Divisional Officer, Hyderabad. However, the third respondent refused to receive the same and on the same day i.e., 25-02-2005 the order under Section 6 of the A.P. Land Encroachment Act, 1905 (for short 'the Act') was affixed to the premises in question holding that since he failed to submit his explanation within the time granted, it is established that he is not entitled to remain in possession and therefore, he is an encroacher and liable for eviction. Aggrieved by the said order, this writ petition is filed.

Initially, this Court by order dated 26-02-2005 while granting time to the learned Government Pleader appearing for the respondents, to get instructions and to produce the record, granted interim stay of demolition of the premises. Today,

when the matter is taken up for consideration, the learned Government Pleader states that the letter of the petitioner dated 21-02-2005 requesting extension of time for submitting his explanation was rejected by the third respondent on 25-02-2005 and on the same day the impugned order was also passed under Section 6 of the A.P. Land Encroachment Act, 1905, directing the petitioner to handover the possession. He states that since a final order has already been passed under Section 6 of the Act, it is for the petitioner to avail alternative remedy of appeal as available under the Act and therefore the present writ petition is not maintainable.

On the other hand, the learned counsel for the petitioner submits that the show cause notice dated 16-02-2005 was actually served on the petitioner on 18-02-2005 at 5 p.m., and immediately thereafter on 21-02-2005 he submitted a letter to the third respondent requesting extension of time for submitting the explanation. He also states that on 25-02-2005 he submitted such explanation, but without considering the same, the impugned order has been passed.

On a perusal of the material on record, it is apparent that the explanation submitted by the petitioner on 25-02-2005 was not taken into consideration by the third respondent before passing the impugned order.

It is relevant to note that in the show cause notice dated 16-02-2005 it was mentioned that the petitioner has to submit his explanation on or before 22-02-2005. The third respondent does not dispute the fact that on 21-02-2005 the petitioner submitted a representation requesting extension of time. If that it be so, the third respondent ought to have considered the same and if he is of the opinion that his request for extension of time is not justified, ought to have informed the same to the petitioner. However, admittedly the third respondent has passed an order only on 25-02-2005 rejecting the request of the petitioner for extension of time and on the same day the final order under Section 6 of the Act has also been passed. The petitioner's case is that on 25-02-2005 itself he has submitted his explanation but the third respondent refused to receive the same and therefore he submitted the same in the office of the respondents 1 and 2. A copy of the explanation, which is at page No.16 of the material paper filed along with this writ petition, shows that the same was received in the office of the respondents 1 and 2. Hence, I do not see any reason to disbelieve the version of the petitioner.

In the circumstances, I am of the view that the procedure followed by the third respondent is not in conformity with the principles of natural justice and therefore the impugned order cannot be sustained. Hence, I am not inclined to dismiss the writ petition on the ground of availability of alternative remedy of appeal under the Act. Since apparently, the impugned order is in violation of principles of natural justice, the same is liable to be set aside on that ground alone and the matter requires consideration afresh on the basis of the explanation offered by the petitioner.

Accordingly the impugned order dated 25-02-2005 is set aside and the writ petition is disposed of with a direction to the third respondent-Mandal Revenue Officer to consider the explanation submitted by the petitioner, which is available at page No.16 of the material paper filed along with this writ petition and pass appropriate orders in accordance with law and communicate the same to the petitioner. Till such time, there shall be a direction to the respondents not to dispossess the petitioner from the premises in question.

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G. ROHINI, J

Dated: 01-03-2005

NOTE: Furnish C.C. by tomorrow

B/o.

LSK

ASSISTANT REGISTRAR

To

1 The Collector, Hyderabad District, At Nampally.
2 The Revenue divisional Officer, Hyderabad District at Collector, Office, Nampally, Hyderabad.
3 The Mandal Revenue Officer, Hyderabad District at Collector, Office, Nampally, Hyderabad.

4 Two C.Cs. to the Government Pleader for Revenue, High Buildings, Hyderabad. (O.U.T.)

5 Two C.D. copies.